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OFFICE OF THE GENERAL COUNSEL

OFFICE OF COUNSEL  
NAVAL FACILITIES ENGINEERING COMMAND NORTHWEST  
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SILVERDALE, WASHINGTON 98315-1101

April 20, 2009

Mr. Paul J. Hirsch  
P.O. Box 771  
Manchester, WA 98353-0771

Dear Mr. Hirsch:

Your correspondence to Ms. Leslie Yuenger, dated February 10, 2009, regarding the Bremerton Auto Wrecking Landfill (BAWL) has been forwarded to me for reply.

As you recall, we discussed the history of the Navy's involvement at this site on the telephone. In summary, the Navy is willing to be involved with other stakeholders in a collaborative manner regarding conditions at the site however, we do not envision taking a lead role in those efforts or contributing Navy funding to the site.

Approximately three years ago this command moved from office space in Poulsbo, Washington to space at Naval Base Kitsap at Bangor. In the course of the move, the Navy's records regarding our technical work at the site were misplaced. We are working toward reconstructing our records. However, based on institutional knowledge, I do not believe Navy conducted a Remedial Investigation/Feasibility Study at the site.

In your correspondence, you specifically requested the Appendices to Navy's Site Hazard Assessment (SHA). We have obtained the Appendices to the Site Hazard Assessment from our contractor and the documents you requested are enclosed.

Please direct any future correspondence regarding this site to me. I can be reached at 360-396-0036 or [nancy.glazier@navy.mil](mailto:nancy.glazier@navy.mil).

Sincerely,

A handwritten signature in black ink, reading "Nancy D. Glazier", is written over a horizontal line.

NANCY D. GLAZIER  
Assistant Counsel

Encls.

13 March 2009  
N. Glazier

SUBJECT: Bremerton Auto Wrecking Landfill (BAWL)

### INFORMATION PAPER

1. **PURPOSE:** To provide information to enable response to correspondence received (Attachment 1) regarding the BAWL site, a.k.a. Ames Landfill or Gorst Landfill located at 4275 Highway 3 SW, Port Orchard, WA.

2. **BACKGROUND:**

BAWL is an abandoned landfill operated from 1967 to 1989 accepting both public and private waste. Historically, the landfill has been associated with an auto wrecking yard that has operated under the names Bremerton Auto Wrecking, Inc., Ames Auto Wrecking, Inc. and Bremerton Auto Wrecking Too, Inc. The landfill property is a triangular parcel of property centered over approximately 700 feet of the Gorst Creek ravine. The auto wrecking and landfill parcels have been severed. The property is currently owned by a trust. The property was acquired at a tax sale from Kitsap County and the trustee claims he was not aware it was a hazardous site. Washington Department of Transportation (WDOT) owns the property directly north and west of the landfill which is State Highway 3.

(Insert source of the information included in this paragraph) During its history the landfill was frequently the subject of Notices of Violation from Kitsap County. From 1 July 1969 to 30 June 1970 Ames had a Refuse Disposal Service Contract with Puget Sound Naval Shipyard. The contract was for an estimated annual volume of 93,000 cubic yards of refuse including industrial trash, contaminated garbage (not suitable for hog swill) (is "hog swill" information in parentheses germane?), timber, logs, oils, tar, chemicals and sawdust. (Do we have information to support or refute disposal of medical waste as discussed in Hirsch letter of 10 Feb 09?) Domestic type garbage was handled by others under separate contract. The wastes were deposited in a ravine over a culvert and Gorst Creek flows under and through the landfill. Worst-case the Navy may have contributed as much as 60% of the total volume in the landfill. However, it is likely that Navy contribution to the site was far less because Navy wastes were deposited on land above the ravine and sorted for recyclable materials (essentially anything with a resale value). The remainder was burned and the ashes were pushed into the landfill.

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The site first came to the attention of the Navy in January 1997. Heavy rains backed up behind the landfill mass and spilled over the top and down the North side of the landfill causing the north face of the landfill to slide and release soil and debris into Gorst Creek. As Navy generated waste that was sent to the site and debris threatened State Highway 3, Navy took action to remove the debris.

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Following the removal action the Navy met with the head of Federal Facilities (Tim Nord), Contaminated Sites Section, Washington Department of Ecology (WDOE). As case law states that there is no waiver of sovereign immunity that would make the Navy liable for conditions at the site under Washington's Model Toxics Control Act (MTCA), the parties agreed that Navy would perform a search for potentially responsible parties (PRPs) at the site and provide a report to WDOE. WDOE would use the report to issue PRPs letters with the goal of putting together a group of former owners, operators and generators that would collectively address conditions at the site. Navy provided a report to WDOE which was largely based on a search of public records as Navy has no regulatory authority to compel information regarding the site. WDOE did not issue PRP letters possibly due to resource constraints.

(Insert explanation of legal/regulatory basis for Navy actions) Navy investigated to determine liability and evaluate the claims made by the property owner and WDOE.

Navy continued to perform technical work at the site and performed a Site Hazard Assessment (SHA) in 2000 and Gorst Creek Hydrologic Modeling in 2001. WADOE listed the site, in Feb 2001, to the Hazardous Sites List, and ranked it as a 1, the highest ranking available. Kitsap County performed an SHA in 2002, and EPA has performed a Preliminary Assessment and Integrated Site Assessment. Contaminants of potential concern include pesticides, metals, semi-volatile and volatile organic compounds.

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According to the County, the site does not qualify for inclusion on the National Priorities List but it has been rated a "1" on Washington's Hazardous Sites List. After completing the SHA, Navy intended to perform a focused Remedial Investigation/Feasibility Study (RI/FS) at the site with a view toward implementing a presumptive remedy (containment). In the planning phases for the RI/FS the County and WDOE requested that the Navy evaluate the site for residential use as opposed to commercial use. Navy interpreted this request and WDOE's failure to pursue other PRPs as an indication that the parties viewed Navy as "just a deep pocket". Consequently, Navy ceased all activity at the site and HQ NAVFAC directed NAVFAC NW not to spend further ER,N funds at the site. We advised the County that any further Navy action at the site would require that the County make a demand on the Navy under the Comprehensive, Environmental Response, Compensation and Liability Act (CERCLA) and thereafter the Navy would be represented by the Department of Justice (DOJ).

Periodically since 2001 heavy rains have caused additional slides and releases of debris. The most recent releases occurred in December 2008. The County has renewed their efforts to address contamination at the site. Navy met with County officials on 10 February 2009 and counsel for the current owner has contacted the Navy to "... step up to its responsibilities..." (Attachment 1). Navy records in regard to the site were misplaced during the move from Poulsbo to Bangor and have not been located. We do not have the records requested.

### 3. DISCUSSION

Recently there has been action by Kitsap County and the City of Bremerton to obtain public funds to address environmental issues at the site. The County is hampered by the

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fact that they do not own the property. EPA is investigating providing the County a \$2 million grant to perform a removal act at the site. Preliminarily it appears that the City may have been successful in obtaining American Recovery and Reinvestment Act (ARRA) funding money which will divert Gorst Creek from the landfill. No efforts have been devoted to identifying and contacting PRPs except Navy.

The parties have been proceeding under the Model Toxics Control Act (MTCA) as the regulatory framework for a cleanup. As Navy never owned the site, there is no waiver of sovereign immunity. If the parties elect to proceed under CERCLA and make a demand on the Navy for a sum certain, the Department of Justice will represent the Navy's interests and the Judgment Fund should pay the Navy's fair share of costs to remediate the site. This will be a lengthy process and will not advance cleanup at the site in the foreseeable future.

### 4. RECOMMENDATIONS

- a. NAVFAC NW counsel respond to Attachment 1. Attachment 2 is a suggested reply.
- b. NAVFAC NW Environmental should take steps to obtain copies of reports, studies, etc. regarding the site from Navy contractors (insert list of known contractors).

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